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Via HAND DELIVERY

Mr. James J. Jochum
Assistant Secretary of Commerce
Import Administration
Central Records Unit, Room 1870
U.S. Department of Commerce
14th Street & Constitution Ave., N.W.
Washington, D.C. 20230

Attention: Elizabeth C. Seastrum

Philip J. Curtin

Re: Certification of Factual Information to Import Administration During
Antidumping and Countervailing Duty Proceedings: Comments of the SKF
Group Companies in Response to the Department's Notice of September 22, 2004

Dear Assistant Secretary Jochum:

The SKF Group companies ("SKF") submit their response to the Department's Notice of September 22, 2004 ("Notice") (59 Fed. Reg. 56738-41). By that Notice, the Department requested comments regarding a proposed change in the Department's regulations regarding the certification of factual information submitted during antidumping and countervailing duty proceedings.

During the past 16 years, various SKF Group companies have participated in the Department's investigations and reviews of antifriction bearings and parts thereof ("AFBs") from France, Italy, Germany, Sweden (prior to revocation of the relevant orders) and, at times, the United Kingdom. The SKF Group companies have participated in such proceedings both as respondents and as a U.S. manufacturer. As respondents in those proceedings, the SKF Group companies have submitted countless factual submissions, all of which were subject to verification by the Department, and, when verified, were done so in virtually every instance without any discrepancy being noted. It is against this background that the SKF Group companies respond to the Department's proposed changes in the certification procedures.

The Department's Notice is apparently a response to one well-publicized verification which raised significant concerns as to the veracity of the respondents involved. In the 112 antidumping and countervailing duty proceedings conducted by the Department in 2003, the SKF Group companies suspect that there was no other comparable instance. The reason for this is simple -- the existing consequences for failing to verify the completeness and accuracy of a company's questionnaire responses and other submissions are already too punitive to disregard. Adverse facts available will, in most instances, drive the reporting party out of the U.S. market. It is for this reason that SKF, like other major respondents, spends significant time and money in insuring that its questionnaire responses and other submissions are accurate and verifiable. The Department's proposed regulation will not, in any way, make SKF's future responses more accurate or complete, neither will it strengthen SKF's existing resolve to submit the most complete and accurate information possible. The regulation, however, will add

significantly to the already considerable burden and expense borne by SKF in responding to the Department's requests for information.

SKF submits that the current certifications utilized by the Department strike the correct balance between the Department's need for assurances as to the accuracy of the information it receives, and the respective roles of the responding party and its outside consultants. As the owner of the information, the responding party is currently required to certify to the accuracy and completeness of any factual submission. In comparison, the responding company's outside consultants, its legal and other representatives, are currently required to certify that, based on the information made available to them, they have no reason to believe that the submission contains any material misrepresentation or omission of fact. Again, this is the appropriate standard. Given the magnitude of information compiled by the company or companies in responding to a Department questionnaire, and the fact that at least half of it typically is derived from sources outside the United States (which sources often are not in English), it is unreasonable to believe that any "reasonable inquiry" would necessarily permit an outside representative to affirmatively attest to the accuracy and completeness of the response.

By trying to respond to one, or possibly even several, possible attempts to submit knowingly false information, the Department's proposed regulation no longer reflects the overall intended purpose of obtaining reasonable assurances as to the accuracy of the data submitted. Rather, the Department has created a fairly complex, burdensome, and expensive procedure for companies responding to the Department's requests for information. These same procedures, however, will not cure the problem of intentionally

fraudulent submissions, as companies so inclined will simply submit signed certifications, irrespective of the nature of the certification.¹

SKF submits that the current regulation already addresses the issues raised in the Department's Notice and does not require amendment or modification to "strengthen" the certification process. Whatever cosmetic, but nevertheless complicated, changes the Department makes to the current certifications, i.e., dates, submission names, a list of supplying individuals, will not change the fact that the current certifications already require a company to certify the accuracy of the specific submission to which the certification is attached. Similarly, the specific mention of criminal sanctions only identifies a possible sanction that currently exists. While SKF maintains that the incorporation of the name of the document, the date, and the possibility of verification and criminal sanctions is unnecessary, the Department could incorporate these terms into a revised certification if the Department deems necessary.

However, there is one proposed revision that is not simply a "codification" of current practice and which SKF finds objectionable. The Department has proposed an elaborate procedure for identifying persons knowledgeable of the facts contained in the submission. Again, inasmuch as a responsible company employee is certifying the response, SKF believes that the proposal is unnecessary. But, to the extent that the Department has concerns as to the breadth of knowledge of the certifying party, this concern should be addressed in the regulation itself, and not by the complicated

¹ No matter how well intentioned the Department's proposed changes are, SKF seriously doubts that the changes will deter any company that knowingly intends to submit false and incomplete data.

procedure proposed for identifying company employees. The Department simply could clarify the regulation by providing that the company's certification must be signed by the person or persons within the company responsible for the information contained in the submission. If one person did not supervise the entire submission and cannot certify as to the accuracy and completeness of the entire submission, the regulation could provide that certifications from each such responsible supervisory person would be required. For example, SKF has project leaders with overall responsibility for both the U.S. and home market responses. In no case should any SKF employee providing information to these individuals be identified or required to execute a certification. To do so would be unnecessary and would unduly complicate and delay the entire certification process.² For the same reasons, it is equally inappropriate and unnecessary to require the identification of individual outside representatives who may have contributed to review of a submission.

Furthermore, the proposed certification for outside representatives is a wholesale and unwarranted departure from existing practice. Outside representatives are currently required to provide certifications. However, an outside representative's affirmative duty to certify the accuracy of the submitted data based on a reasonable inquiry would significantly alter the roles and responsibilities of the outside representatives and the

² SKF notes further that it would consider employee identification, beyond that of a supervisory company representative, to be business proprietary information. This proposed change, therefore, would have an impact on SKF's ability to submit information in certain case files, such as A-100-001, which is the General Issues case file developed by the Department in the AFB reviews, but which is limited to the submission of public documents.

timing and the nature of the reasonable inquiry that will be required.³ In this regard, SKF notes that such a certification is inconsistent with the circumstances under which outside representatives operate in these proceedings. The outside representatives often must make a certification, under very tight deadlines, as to information that is located outside the United States and which is in a foreign language. Moreover, trade counsel often are hired only for a limited purpose and are not intimately familiar with the client's business. Would the proposed change mandate on-site verifications of all data prior to submission? If so, would it necessarily require that this be done immediately prior to the submission of the data, at a time when the information being submitted is finalized? In addition, would it mandate such reviews prior to each and every submission of factual information, not just prior to the submission of questionnaire responses? (In this regard, SKF notes that supplemental requests normally require responses within two weeks.) On its face, the proposed change in the certification of outside representatives would appear to require each of the above. Given the frequent submission of factual information from a variety of sources under very tight deadlines, SKF submits that there is neither the time nor the budget to enable such extraordinary review by its outside consultants.

³ In addition, the independent ongoing obligation on the part of the outside representatives raises questions as to the type of information covered, *i.e.*, do simple mistakes of fact or clerical errors constitute a "material misrepresentation or omission." It also raises a potential conflict between the Department's rule and the attorney-client privilege and/or ethical requirements for preserving client confidences. Furthermore, it is unnecessary to impose a similar obligation on the responding parties. Such an obligation is inconsistent with the current deadlines for the submission of new factual information (19 C.F.R. § 351.301(b)). Moreover, given the fact that parties must certify the accuracy of the information submitted and parties have an interest in doing so or run the risk of failing verification, SKF sees no reason to further complicate this process with this suggested change.

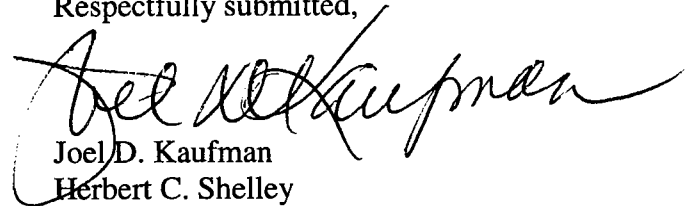
The Department should not amend the certification procedures for outside representatives. Even if the Department were inclined to do so, any amendment would be premature without first defining the parameters of a “reasonable inquiry” by a party’s (particularly, a foreign party’s) outside representatives. What constitutes a “reasonable inquiry” under the circumstances of an antidumping investigation or review is obviously in and of itself a very complicated question. Whatever the definition, however, a “reasonable inquiry” necessary to certify the accuracy and completeness of a submission would impose a significantly greater obligation on an outside representative than is currently required by the Department’s regulations, or may be required in other proceedings.⁴

⁴ See, e.g., the IRS’s rules of practice for tax practitioners, 31 CFR §10.349(c):

Relying on information furnished by clients: A practitioner . . . preparing or signing a tax return as a preparer generally may rely in good faith without verification upon information furnished by the client.

For all of these reasons, the Department should maintain the current certification requirements. The Department should address its desire to strengthen the certification procedures, if at all, through the minor changes in 19 C.F.R. § 351.303(g) outlined above, rather than through the burdensome and costly procedures outlined in the proposed regulation.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Joel D. Kaufman". The signature is fluid and cursive, with a large, sweeping "J" and "K".

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